IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

Rajendra Singh Chandrawal
vs
The State of Rajasthan & Ors.

S.B. CIVIL WRIT PETIITON NO.2033/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 15th December,2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.R.N. Upadhayay, Advocate, for the petitioner.
Mr.Rameshwar Dave, Dy. Government Advocate, for the respondents.
Ms. Kusum Rao, Advocate, for the respondents.

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BY THE COURT: -

This writ petition has been filed by the petitioner with the prayer that the orders dated 12.4.1999 and 27.3.1999 passed by the respondents be quashed and set aside and the

respondents be directed to count the period of service rendered by him in the Harijan Pathshala from 6.4.1964 to 31.1.1971 for the purpose of retiral benefits.

The petitioner was initially appointed on the post of Teacher in the aforesaid school which was being run by Banswara Zila Seva Sangh, Pratapur and was receiving grant in aid to the extent of 85% from the State Government. The Government vide its order dated 4.2.1971 directed to take over 14 primary schools including the aforesaid school. The petitioner while so serving retired on 30.6.1992 upon attending the age of superannuation. The respondents by their notification dated 30.11.1978 declared that the services rendered by an employee in the Municipality or institution receiving prior to taking over of such institutions by the Government are to be counted for the purpose of pension. According to the said notification, the petitioner was required to refund the retiral benefits already received on the management of such institution with interest @ 5% per annum. Interest however was to be charged only in so far as

contribution of the employer which is accordingly deposited a sum of Rs.3125/- and on 5.1.1996 an entry to this effect was made by the D.E.O. in the service book of the petitioner and submitted the revised pension papers alongwith service book of the petitioner to the Pension Department vide letter dated 8.1.1996 with a request to issue revised PPO after taking into account the services rendered by the petitioner from 6.4.54 to 31.1.1971. The pension department thereafter acknowledged the said letter by raising objections on 5.2.1996. The matter was then recommended by the Director, Primary Education to the Dy. Secretary, Education Department for necessary sanction for rant of revised pension to the petitioner by letter dated 3.3.1998. The Government belatedly on 12.4.1999 replied to the Director that since the petitioner had received his own contribution and employee's contribution under CPF Scheme aggregating Rs.17020/- on 9.4.1971, it was not possible to grant him benefit of his past service. The petitioner then submitted representations to the respondents on 19.6.2000, 27.7.2001, 1.5.2002, 30.3.2002 but of no avail. The petitioner has cited example of one Shri Virendra Nath Jogi

who was similarly situated teacher working in the Primary School, Kakara Sagwara under Rajasthan Seva Sangh, Dungarpur and then taken over by the Government under the same order and submitted that he has also been allowed the post service from 1.11.1965 to 30.6.19970 in terms of aforesaid notification. The petitioner submitted that in the order of absorption dated 2.2.1978 name of said Shri Virendra Nath Jogi appears at S.No.14, who was working in the same school run by Rajasthan Seva Sangh, Dungarpur and thereafter the said school was taken over by the Government. He also deposited the amount of CPF and interest @ 5% per annum after his retirement in terms of Rule 14((2) of the Pension Rules, 1996 and then was allowed the benefit.

The respondents have disputed the claim of the petitioner and have argued that petitioner did not fulfill the condition of notification dated 30.11.1978 and specially para no.4. Since he withdrawn the amount of his own CPF scheme, he was not entitled to count the period of service rendered with the aided institution towards his retiral benefits. Although it was

admitted by the respondents that the petitioner has after superannuation deposited his own contribution towards CPF alongwith 5% interest but that do not amount to compliance of condition no.4.

Having heard learned counsel for the parties, I am satisfied that not only the petitioner has made compliance of para no.4 of the said notification which requires such employee to refund employer portion of contribution on the interest including the amount of said contribution for gratuity, if any, created to Government revenue with interest @ 5% on the contribution of the employer but his case is also exactly similar to that of Shri Virendra Nath Jogi. There is no reason for the respondents not to have granted the benefit of the period of service rendered by him from 6.4.1964 to 31.1.1971. The explanation given by the respondents in not extending the said benefit to the petitioner in fact does not make out any substance and this in fact amount to giving no reason at all for not abiding by clause 4 of the notification. I am of the considered view that the respondents have wrongly declined to

extend the benefit of period of service from 6.4.1964 to 31.1.71 to the petitioner to be counted for the purpose of payment of retiral dues particularly, when he has deposited entire amount received by him alongwith interest @ 5% per anum.

In the result, the writ petition is allowed. The respondents are directed to issue revised PPO to the petiitoner within a period of two months from the date of receipt/supply of copy of this order. The arrears of the pension together with interest @ 6% per annum shall also be paid to the petitioner within the aforesaid two months.

There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-